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Abstracts of Cases Decided by the Kentucky Court of Appeals

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court rulings and such is not only true where the corporation is certain that they come within the rule, but is quite advisable where the business done is of such a nature that a question arises whether the conduct of such business or the doing of things contemplated come within the rule. The expense to such an agency is very small and safety and security made certain. A single contract or act that might place the corporation within the rule would be safeguarded by compliance with the law while that single contract might be absolutely annulled by failure to comply with the statute.

The agency fees would average from ten dollars to fifty dollars per annum with such additional pay as the circumstances or business afterward developing would demand. This retainer would cover, "known office or place of business," being the agents office. The other incidental expense would be so small as to be trival.

ABSTRACTS OF CASES DECIDED BY THE KENTUCKY COURT OF APPEALS.

NATIONAL BENEFIT ASSOCIATION V. CLAY, INSURANCE COMMISSIONER.

Decided January 28, 1915. Appeal from Franklin Circuit Court.

When a foreign assessment association has fully complied with the requirements of Section 680 of the Kentucky Statutes, and is in a sound condition, and there is nothing in its charter or by-laws or method of doing business that is obnoxious to the laws of this State, the Commissioner of Insurance is not authorized to refuse it a certificate to do business in this State. Under Section 202 of the Constitution a foreign corporation will not be allowed to transact business in this State on more favorable conditions than like domestic corporations, but it is not necessary hat a foreign corporation seeking authority to do business in this State should be incorporated or organized according to the forms prescribed for the incorporation or organization of domestic corporations. Under this section when a foreign corporation comes into this State, no matter how it was incorporated or organized in another State, it cannot do business in this State under more favorable conditions than like domestic corporations. Under Sections 752 and 753 of the Kentucky Statutes the Commissioner of Insurance has ample power to protect the people of the State against foreign companies that are not in a sound condition or that fail or refuse to comply with the laws of this State, and when a foreign corporaion is admitted to do business in this State this privilege

does not in any manner interfere with the right of the commissoner to compel it to do business in conformity with the laws of this State, and the provisions of its charter and by-laws, or to at any time exclude it from the State if it is doing business in violation of our law or in a manner not authorized by its charter or by-laws or if its affairs for any reason become in an unsound condition.

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JUSAICE V. MEADE.

Decided January 28, 1915. Appeal from Pike Circuit Court.

Ability to Read and Write.—In order to comply with the statute allowing women to vote in school elections, and providing that they shall be able to read and write, it is sufficient if the voter can read in a reasonably intelligible manner sentences composed of words in common use, and of average difficulty, though each and every word may not always be accurately pronounced; on the other hand, one is able to write who, by the use of alphabetical signs, can express in a fairly legible way words in common use and of average difficulty, though each and every word may not be accurately spelled.

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G. I. FRAZIER V. OWENSBORO STAVE & BARREL COMPANY.

Decided January 22, 1915. Appeal from Daviess Circuit Court.

In a contract for the sale of personal property, the intention of the parties controls, as to whether the title passes or does not pass, regardless of all other circumstances of the transaction. Before the title to personal property passes from the vendor to vendee, the price must be agreed upon, or some method agreed upon by which the total price can be definitely ascertained. Where property, such as staves, is shipped by a common carrier from a distant point to a purchaser, and he has had no opportunity for inspection, he has a right to inspect the property before receiving it, to determine whether it is in accordance with the contract or not, and if not in accordance with the contract, to reject it, unless it appears from the contract that it was intended for the title to it to pass to the purchaser without inspection. In determining what was the intention of the parties in a contract for the sale of personal property, the court should look to all of the facts and circumstances, and the customs of the trade in such commodity.

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LOUISVILLE & NASHVILLE RAILROAD COMPANY V. GADDIE.

Decided January 19, 1915. Appeal from Knox Circuit Court.

A railroad company has the right to make reasonable rules and regu-

lations for the operation of its trains; and it is the duty of the passenger before boarding a train, to ascertain whether it stops at the place to which he desires to go; and if he boards a train not schedlued to stop at his destination, he cannot recover damages because of the refusal of the conductor to stop thereat, although if the passenger at the time he purchases his ticket effects an agreement with or receives information from the ticket agent that the train he proposes to take will stop at his destination to permit him to alight, the company is ordinarily bound by the agreement. Where, however, there is no such agreement or information made or given by the ticket agent when the ticket is purchased, and by mistake of the gateman and brakeman, a passenger is permitted to board a train not scheduled to stop at his destination, the conductor has a right to correct the error, and to require the passenger to leave the train at an intermediate station which is a regular stop and a suitable place to wait for the next train which does stop at the passenger's destination.

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BRUCE V. SCULLY.

Decided January 22, 1915. Appeal from Kenton Circuit Court, (Common Law and Equity Division.)

Whether the facts proven, in attempting to show a probable cause for the prosecution of another, are sufficient to make a probable cause is a question of law, exclusively for the court. If the facts relied upon to show probable cause in a suit of malicious prosecution are disputed, then as to whether or not such facts exist, is a question for the jury under proper instructions. In a suit for damages for malicious prosecution, the burden of proof is upon the plaintiff to show want of probable cause as well as malice in the defendant, who is charged with instituting the prosecution, upon which the suit is founded. If the evidence for plaintiff shows conclusively from undisputed facts that the defendant had probable cause for the institution against plaintiff of the prosecution complained of, there is no question for the jury, and the court should direct a verdict for the defendant.

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BURRIS, ET AL V. STEPP.

Decided January 21, 1915. Appeal from Pike Circuit Court.

Under Sub-section 13, Section 1409, Kentucky Statutes, no contract for the sale of standing trees shall be enforcible unless the same or some memorandum thereof is in writing, signed by the parties. Sub-section 14 of the same Section does not limit application of Sub-section 13. Under this Section, when the written contract is executory and the trees

contracted are branded by the owner, or with his consent, then the sale has the same force as a recorded sale of land.

CASTILLO V. McBEATH.

Decided January 27, 1915. Appeal from Wayne Circuit Court.

In the absence of an allegation of fraud or mistake, parol testimony is admissible to show that a deed absolute on its face was executed to secure a debt, and is therefore a mortgage. When a doubt exists as to whether a conveyance is a deed or a mortgage, that doubt will be resolved in favor of the debtor, and the conveyance construed to be a mortgage. A mortgagor of a two-ninths interest in a tract of land, being unable to pay the debt when due, executed to the mortgagee a deed conveying the absolute title to all of the land, and at the same time executed a collateral agreement providing for the redemption of the land within six months upon payment of the debt and interest, the mortgagor remaining in possession. Held, under the evidence that the chancellor properly adjudged the deed a mortgage.

FIRST NOTIONAL BANK V. SANDERS BROS., ET AL.

Decided January 27, 1915. Appeal from Allen Circuit Court.

A personal judgment cannot be rendered against a defendant who is constructively summoned, and has not entered his appearance. A judgment in rem can not be rendered against a defendant constructively summoned, except in favor of a plaintiff who has acquired a lien by attachment or otherwise, against the property of the non-resident, and then the judgment can only be to subject the property of the non-resident to the payment of his debt, to the extent of the proceeds of such property. An affidavit for a warning order or attachment at the suit of a private corporation, must be made by its chief officer in the county, unless such officer be absent, in which case it can be made by an agent or attorney, whose affidavit must show that such officer is absent from the county. Who the chief officer of a corporation is, is defined by Section 732, Subsection 33, of the Civil Code. A non-resident defendant, who is then absent from the State, and who does not cause a forthcoming bond, provided for in Section 214 of the Civil Code, to be executed for him, and who does not thereby obtain or retain the possession of the attached property, does not enter his appearance to the action, on account of Section 690, of the Civil Code, when a forthcoming bond is executed by some one else who claims to own the property, and who obtains or retains possession of it thereby, although said bond on its face purports to be executed for the non-resident. When the petition of a plaintiff is dis-

missed, it has the effect of discharging an attachment sued out by th plaintiff, although the judgment dismissing the petition does not orde a discharge of the attachment.

THACKER, BY ET AL. V. NORFOLK & WESTERN RAILWAY COMPANY.

Decided January 26, 1915. Appeal from Boyd Circuit Court.

Persons using a private crossing who are in the habit of depending upon signals required to be given for a nearby public crossing are en titled to the benefit and protection of such signals, and if the company fails to give the public crossing signals and the traveler at the privat crossing is injured as a result thereof, he may recover damages. Where an action is brought in a court of this State to recover damages for personal injuries sustained in another State, the rights of the complaining party are to be determined by the laws of the State in which the injury occurred. Where a common law action is brought in this State to recover damages for an alleged tort committed in another State, the plaintiff may set out a sufficient cause of action under the common law as administered in this State without setting up the law of the foreign State and averring that under the law of that State he was entitled to recover, as it will be presumed that the common law here in force prevails in the fereign State; and so it is incumbent upon the defendant, if he desires to defeat a recovery upon the ground that an action founded on common law principles could not be maintained in the State where the cause of action arose, to plead and prove the law of such State.

COMMONWEALTH V. STAHR, ET AL.

Decided January 28, 1915. Appeal from Fulton Circuit Court.

Courts cannot add to or take from the words of a statute to give effect to any supposed intention of the Legislature; but when the intention can be ascertained with reasonbale certainty, words may be altered or supplied in a statute so as to give it effect, and avoid any repugnancy to or inconsistency with such intention. When it is manifest upon the face of an Act of the Legislature that an error has been made in the use of words, the court may correct the error and read the statute as corrected in order to give effect to the obvious intention of the Legislature. Monuments and plain lines of location must generally, in determining the extent of territorial limits, prevail over any mere acts of user or attempted jurisdiction by the municipal authorities. The corporate boundary of a city can not be extended or altered by officers or employes of the city performing work or doing other acts outside of the city's corporate limits. The meaning of a deed, that is, what it covers, is a question of law for the court; what the boundaries of a given piece of land are, is a question of construction for the court also; where they are is a question of fact for the jury.